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ORIGINAL FILE

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January 4, 1993

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VIA FEDERAL EXPRESS

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: Reply Comments filed in Response to Notice of Proposed Rule Making in MM Docket 92-259 (In the matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992- Broadcast Signal Carriage Issues)

Dear Ms. Searcy:

Enclosed for filing are the Reply Comments of WJB-TV Limited Partnership which are submitted in response to the Notice of Proposed Rulemaking released on November 19, 1992 in MM Docket No. 92-259. Pursuant to the Notice, an original and nine (9) copies are enclosed so that each Commissioner may receive a personal copy.

If you have any questions or need additional information, please advise.

Very truly yours,

WJB-TV Limited Partnership

BY: Kenneth E Hall
Kenneth E. Hall
General Manager

KEH/jpd
Enclosures

cc: Mr. Walter R. Pettiss
Mr. Robert A. Brannon
(all with enclosure)

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE

THE FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of:

Implementation of the Cable Television Consumer Protection and Competition Act of 1992

Broadcast Signal Carriage Issues

MM Docket No. 92-259

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COMMENTS OF WJB-TV LIMITED PARTNERSHIP

In its Notice of Proposed Rulemaking ("Notice") in MM Docket No. 92-259 released November 19, 1992, the Commission requested Comments concerning the adoption of implementing regulations relating to mandatory television broadcast signal carriage (sometimes called "must carry") and retransmission consent. While the Notice solicits comments on a variety of important matters, WJB-TV Limited Partnership ("WJB") will limit its initial response to one particular concern pertaining to the retransmission consent issue. WJB, however, reserves the right to comment on any other issues in reply comments.

WJB is the operator of a wireless cable television system in Ft. Pierce, Florida. Like many alternative providers of video services, it competes head-to-head for subscribers with an entrenched cable television system. In addition to providing a quality alternative to customers who have cable services available to them currently, WJB provides valuable public services to customers within its service area who do not.

WJB's experience indicates that in order for an alternative provider of video services to compete with an entrenched cable system, it must offer substantially all of the channels that customers want to watch. The inability or failure to provide even a few "key" channels can be harmful to a competitive effort. This is especially true in the wireless cable industry, where technology limits the number of channels that can be offered to less than that typically offered by cable systems; consequently, those channels that are offered must be the ones most desired by customers.

In enacting the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act of 1992"), Congress sought to promote competition in the video marketplace. See Section 2(b) of the Cable Act. Congress also directed the Commission to consider "the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and [to] ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation ... to ensure that the rates for the basic service tier are reasonable." Section 6(A)(2) of the Cable Act of 1992. Thus, through the Cable Act of 1992, Congress sought both to promote competition and to ensure that basic cable rates would be reasonable.

Consistent with these objectives, the Cable Act of 1992 specifically prohibits exclusive contracts between broadcasters and cable companies in many situations. See Section 12 and 19 of the Cable Act of 1992. Such contracts conceivably could serve to undermine the Congressional objectives of enhancing competition and assuring reasonable rates; not only would they deny competitors critical programming and thereby place them at a severe competitive disadvantage, but the cost of securing exclusive rights would presumably be passed along to subscribers in the form of higher rates. Thus, Congress concluded that exclusive contracts, in many circumstances, are inconsistent with the policies of the Cable Act of 1992.

WJB is concerned, however, that the retransmission consent provisions of the Cable Act of 1992, if read in isolation without reference to congressional intent, could provide an all-new vehicle for these exclusive contracts to arise again. Specifically, the possibility exists that a cable company and a broadcaster which has elected retransmission consent status could enter into an exclusive contract, again depriving alternative providers of this critical programming. In essence, the Cable Act of 1992, which prohibits exclusive contracts in many situations, could, in effect, sanction such contracts in the other situations, thus undermining the very objectives of Congress in enacting the Act.[1]

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[1] WJB believes that the Commission has both the power and mandate from Congress in the Cable Act of 1992 to promulgate rules that preclude exclusive contracts between cable companies and broadcasters as these contracts serve to limit and thwart competition while the consumer will ultimate pay the cost of such contracts through higher cable rates. Such a potential result was not Congress' intent.

This possibility is a very real one. Cable companies, because of their size and financial resources, have acquired a degree of leverage that is unavailable to alternative providers. This leverage could be used to coerce broadcasters into agreeing to exclusive arrangements, which could "tie up" some of the most valuable channels in the market, effectively precluding any competitive threat to the cable company. This is especially a concern in the case of local broadcasters, whose signals are critical to the success of any alternative video system.

WJB believes that the only solution to this problem is for the Commission to prohibit exclusive contracts between cable (and other video providers) and broadcast stations which elect retransmission consent status. Such stations should be required to make their signals available to all video providers in the market on an equal and non-discriminatory basis. Any arrangement which has the effect of precluding legitimate competition and limiting consumer choice in a market should be subject to extreme scrutiny.[2]

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[2] WJB is also concerned about the possibility that a broadcaster who elects must-carry status with respect to cable companies may attempt to elect retransmission consent status with respect to alternative providers. In essence, these providers would have to pay a programming charge that cable companies do not pay, which would affect their ability to compete with cable. This disparity would create a substantial competitive disadvantage to companies such as WJB, especially if the consent charge imposed by the broadcaster is significant. The Commission should examine this issue carefully and, at a minimum, ensure that consent charges in competitive markets be equal and nondiscriminatory. WJB believes that Congress' intent as derived from a fair reading of the Cable Act of 1992 in its entirety was to encourage competition as one of its means of protecting the consumer. The Commission therefore should promulgate rules that will insure that competitors of cable companies are not severely hampered through discriminatory retransmission consent agreements.

Respectfully submitted this 4th day of January, 1993.

WJB-TV Limited Partnership

BY: Kenneth E Hall

Kenneth E. Hall
General Manager